

The South Carolina Court of Appeals

Shannon Cook, Claimant, Respondent,

v.

Spartanburg Steel Products, Inc., Defendant, Appellant.

Appellate Case No. 2014-001372

ORDER

Appellant petitions this court to rehear the dismissal of its appeal. Because the order indicates the appellate panel of the South Carolina Workers' Compensation Commission held the issues of temporary total disability and permanent disability in abeyance, the order is not immediately appealable. We deny the petition for rehearing.

Respondent injured his lumbar spine in 2007. In 2011, a single commissioner found Respondent was entitled to an award of twenty-five percent permanent partial disability to the spine and full medical treatment for pain medications, psychological evaluation and treatment, spinal injections, and physical therapy. The next year, Respondent filed a Form 50, alleging he suffered a change of condition for the worse from the injury to his "spine and psyche." Respondent did not request a hearing at that time. In 2013, Respondent filed a Form 50 request for a hearing, claiming injuries to his back, psyche, bilateral legs, and hips. Shortly thereafter, Respondent filed an amended Form 50, requesting a hearing and alleging a change of condition. The parties filed pre-hearing briefs and proceeded to a hearing before a single commissioner.

At the hearing, Respondent claimed he suffered a change of condition for the worse, argued he was entitled to spinal surgery, and sought reimbursement for a C.T. Myelogram and other co-pays. In her final order, the single commissioner found Respondent's spine condition had significantly worsened. The single commissioner ordered Appellant to provide ongoing medical care and reimburse

Respondent for the C.T. Myelogram, other co-pays, and filing fee. The single commissioner found Respondent had not yet reached maximum medical improvement. However, the single commissioner concluded she could not order surgery because she was limited by the 2011 award, which provided a list of future medical treatments. The single commissioner decided permanency was premature and stated, "Any issue relating to [total temporary disability] and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse."

Appellant filed a Form 30 request for review by an appellate panel of the commission. At the hearing, Appellant argued Respondent had not suffered a change of condition for the worse and the commission lacked jurisdiction due to Respondent's alleged filing errors of the Form 50. The commission affirmed the single commissioner's findings in full, including her decision that the issues of total temporary disability and permanent disability were to be held in abeyance.

Appellant appealed to this court, and Respondent moved to dismiss the appeal. This court dismissed the appeal as not immediately appealable because the commission's order indicated the issues of temporary total disability and permanent disability were held in abeyance as the issue of permanency was premature.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a "final decision" of the commission. An order of the commission is not a final decision unless it resolves the entire action. *See Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); *Bone*, 404 S.C. at 73, 744 S.E.2d at 556 (same); *see also id.* at 75, 744 S.E.2d at 557 ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (quoting *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))).

Here, the commission's order indicates the issue of permanency was premature because Respondent had not reached maximum medical improvement. Specifically, the order states, "Any issue relating to [total temporary disability] and permanency is held in abeyance, as the only issue before the undersigned was whether the [Respondent] has sustained a change of condition for the worse."

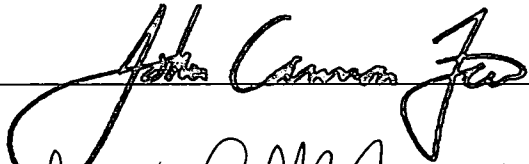
Because the commission has yet to determine permanency and indicates additional proceedings will be necessary, the commission's order is not a final decision and not immediately appealable. *See Rose v. JJS Trucking, LLC*, Op. No. 5291 (S.C. Ct. App. filed Jan. 28, 2015) (Shearouse Adv. Sh. No. 4 at 91) (finding a commission's order was not a final decision and not immediately appealable because the order left the merits of the employee's claim for permanent disability unresolved); *Ex parte S.C. Prop. & Cas. Ins. Guar. Ass'n*, Op. No. 5290 (S.C. Ct. App. filed Jan. 28, 2015) (Shearouse Adv. Sh. No. 4 at 85) (finding a commission's order was not a final decision and not immediately appealable because the commission had yet to determine the claimant's substantive rights).

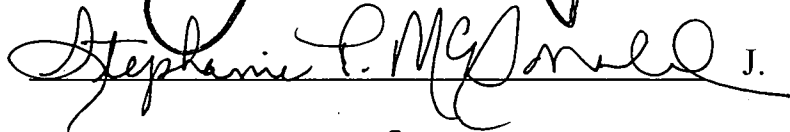
Appellant argues the commission's order is a final decision because the parties did not raise the issues of temporary total disability and permanency to the commission. Further, Appellant alleges Respondent added the "boilerplate language" of "[a]ny issue relating to [total temporary disability] and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse" to the single commissioner's proposed order, which was later adopted by the commissioner. According to Appellant, allowing a party to add vague "boilerplate language" would preclude an appeal to this court. However, Appellant did not raise this argument before the appellate panel.

Appellant also argues this court erred in applying *Bone* because *Bone* addressed appealability under section 1-23-390 of the South Carolina Code (Supp. 2014), while section 1-23-380 governs this case. However, we dismissed the appeal pursuant to section 1-23-380. Further, *Bone* is instructive for determining whether an order is a "final decision" of the commission. *See id.* at 73-74, 744 S.E.2d at 556. ("An agency decision which does not decide the merits of a contested case . . . is not a final agency decision subject to judicial review. . . . A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." (citations and internal quotation marks omitted)).

Finally, Appellant asserts the order is immediately appealable because it has exhausted all other administrative remedies. *See* § 1-23-380 ("A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."). Appellant fails to distinguish this case from any other workers' compensation case where there is no practical hope of the employer receiving a refund on its payments after a successful appeal.

Accordingly, we find the commission's order is not immediately appealable. We deny the petition for rehearing.¹

 C.J.

 J.

 A.J.


Columbia, South Carolina

cc:

Ryan Spence Montgomery, Esquire

Bradford B. Easterling, Esquire

Helen Faith Hiser, Esquire

FILED
3/19/15 

¹ Because we deny the petition for rehearing, we find it unnecessary to address Respondent's motion to strike.